

**WILTSHIRE COUNCIL**

**SOUTHERN AREA PLANNING COMMITTEE**

**24 SEPTEMBER 2015**

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**COMMONS ACT 2006 – SECTION 15(1) AND (3)**  
**APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – THE**  
**COMMON / BROWNS COPSE FIELD / BLUEBELL WOOD FIELD / VILLAGE HALL**  
**FIELD / THE FIELD, WINTERSLOW**

**Purpose of Report**

1. To:
  - (i) Bring the application back before the Committee to formalise and agree the reasons for the Committee's in principle refusal of the Inspector's recommendation in relation to the copse.
  - (ii) Reach a decision on the application as a whole.

**Relevance to the Council's Business Plan**

2. Working with the local community to provide an accurate register of town and village greens, making Wiltshire an even better place to live, work and visit.

**Background**

3. Please see previous report attached at **Appendix 1**, which was considered by Members of the Southern Area Planning Committee at its meeting dated 30 April 2015.
4. In November and December 2014 Wiltshire Council held a non-statutory public inquiry into an application to register land as a town or village green, under Sections 15(1) and (3) of the Commons Act 2006, in the parish of Winterslow. At the inquiry, evidence was given orally by witnesses both in support and in objection to the application. This evidence was then tested through cross-examination and re-examination of the witnesses.
5. Following the inquiry, the independent Inspector appointed by Wiltshire Council to preside over the inquiry produced a report of his findings and made the following recommendation to Wiltshire Council:

*“The Application by Winterslow Opposed to Over Development (WOOD) under Section 15(3) of the Commons Act 2006 be approved but only to the extent that Brown's Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council.”*

6. The Council is now required to make a decision on the application made by Winterslow Opposed to Over Development (WOOD) under Section 15(3) of the Commons Act 2006.
7. At the Committee meeting dated 30 April 2015, Members of the Committee made the following resolution:

*“To, in principle, refuse the report’s recommendation. The item would be brought back to a future Committee with reasons for refusal and would be voted on by Members.”*

### **Main Considerations for the Council**

8. From the discussion at the meeting on 30 April 2015, Members raised a number of reasons for refusing the Inspector’s recommendation. The reasons given by Committee members are listed below.
  - (i) Concerns over the future maintenance liability if the copse is registered and the need to maintain the site in its current state. The Committee was concerned as to who would be responsible for maintenance and maintenance costs.
  - (ii) The Inspector “sat on the fence”, when making his recommendation to the Council.
  - (iii) Alternative recreational activities are locally available.
  - (iv) Recording the land as a village green could affect the development potential of the land.
  - (v) Moral objections to the landowner potentially losing land and the need to protect the landowner’s rights over the land.
  - (vi) The need to apply common sense to such an item.
  - (vii) The suitability of the copse as a village green. The copse needs regular maintenance in the form of coppicing.
  - (viii) The viability of the lawful sports and pastimes listed, within the copse.
9. Members are now requested to consider these reasons for refusing the Inspector’s recommendation in relation to the copse and determine whether or not they should be accepted in part or in whole by the Committee or whether the reasons listed in paragraph 8 should be considered in further detail and amended if considered appropriate. If they are not all to be accepted, or are to be amended, the Committee must give the reasons for its decisions.

10. Members are also required to reach a decision on the application as a whole. There are three distinct areas of land which form part of the application land (please see land ownership plan at **Appendix 1C**):
  - (i) The field off Middleton Road.
  - (ii) Browns Copse.
  - (iii) The area of the copse owned by Wiltshire Council (the north-west corner of Browns Copse).
11. Members have in principle refused the Inspector's recommendation to approve the application but only in respect of the application land known as Brown's Copse, to the extent that Brown's Copse is registered as a town or village green in its entirety, other than the north-west corner of the copse that is owned by Wiltshire Council.
12. Whilst this in principle refusal addresses the registration of the area of Browns Copse in the ownership of Mr and Mrs Sheppard, it does not address the application as a whole, i.e. the Committee still has to decide whether or not the remainder of the application land – the field and the area of the copse owned by Wiltshire Council, should be registered as a town or village green. Part of the Members' reasoning for an in principle refusal of the registration of the copse, is that the lawful sports and pastimes listed by witnesses, may be viable within the field, e.g. football and kite flying, but are not viable within the copse, but the Committee has also to consider whether or not the field should be registered. If the Committee's decision is that these areas of land should also remain unregistered, the Committee must in part agree with the Inspector's findings that the field and the area of the copse owned by Wiltshire Council should not be registered, for the reasons given within the Inspector's report.
13. The decisions open to the Committee are as follows:
  - (i) To agree the Inspector's recommendation in its entirety and register only the copse, other than the north-west corner owned by Wiltshire Council, based on the available evidence.
  - (ii) To reject the Inspector's recommendations/findings in part and register all of the land as a town or village green, based on the available evidence.
  - (iii) To reject the Inspector's recommendations/findings in part and not register any of the land, based on the available evidence.
  - (iv) To reject the Inspector's recommendations in full and to modify the area of land to be registered (for example only registering the field and/or the land owned by Wiltshire Council), based on the available evidence.
14. Where the Committee refuses the Inspector's recommendation, it must make an alternative decision and give legally valid reasons for this decision.

15. Under Section 15(3) of the Commons Act 2006, the only consideration which the Committee Members may take into account in making their decision is the **evidence that a significant number of inhabitants have indulged as of right in lawful sports and pastimes over the land for a period of 20 years or more (where use has ceased)**. Issues such as the future maintenance of the land if it is successfully registered as a town or village green; planning and future development of the land; moral issues of land ownership and the availability of alternative recreational facilities locally, for example, are not legally valid reasons for the purposes of making a decision on whether or not to register land as a green under the Commons Act 2006.
16. The reasons given must be valid and can only be based on the evidence before the Registration Authority, given that the decision of the Council is potentially open to be legally challenged by way of judicial review. Members are referred to the following evidential documents which must be considered before they make their decision:
  - (i) The completed witness evidence forms, which may be viewed using the following link: [www.wiltshire.gov.uk/villagegreeninwinterslow](http://www.wiltshire.gov.uk/villagegreeninwinterslow)
  - (ii) Wiltshire Council decision report on whether a non-statutory public inquiry should be held (dated 31 January 2014 – **Appendix 1D**)
  - (iii) Inspector’s Recommendation to the Commons Registration Authority, (dated 10 March 2015 – **Appendix 1E**)

### **Safeguarding Considerations**

17. Considerations relating to safeguarding impacts of the proposal are not permitted under Section 15(3) of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

### **Public Health Implications**

18. Considerations relating to the public health implications of the proposal are not permitted under Section 15(3) of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

### **Environmental Impact of the Proposal**

19. Considerations relating to the environmental impact of the proposal are not permitted under Section 15(3) of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

### **Equalities Impact of the Proposal**

20. Considerations relating to the equalities impact of the proposal are not permitted under Section 15(3) of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

## **Risk Assessment**

21. The holding of a non-statutory public inquiry and the production of the subsequent report and recommendation to Wiltshire Council, as the Registration Authority, from an independent Inspector, have reduced the risk to the Council of a potential legal challenge as the evidence has been heard, tested and considered.
22. It is open to the Council to reject the Inspector's report and recommendation; however, where the Council does so, it must give legally valid reasons as the Council's decision is open to legal challenge. The Committee must only consider the evidence before it, which includes the Inspector's recommendation (which was made following a non statutory public inquiry where the Inspector heard evidence from witnesses in support of the application and witnesses who opposed the application), that a significant number of inhabitants of any locality or of any neighbourhood within a locality have indulged as of right in lawful sports and pastimes on the land for a period of 20 years or more without interruption.

## **Financial implications**

23. Presently there is no mechanism by which a Registration Authority may charge the applicant for processing an application to register land as a town or village green and all costs are borne by the Council.
24. Where the Council makes a decision to register land or not to register land as a town or village green it must give reasons for its determination as the decision is open to legal challenge. The legal costs of a successful legal challenge against the Council could be in the region of £35,000 - £80,000, for which there is no budgetary provision.
25. There is no duty placed upon the Registration Authority to maintain land registered as a town or village green.

## **Legal Implications**

26. If the land is successfully registered as a town or village green, the landowner could potentially challenge the Registration Authority's decision by an appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965 (the 1965 Act), which allows the High Court to amend the register only if it can be shown that the registration ought not to have been made and that it is just to rectify the register. The overall effect is that the registration of the land is deemed to have been made under Section 13 of the 1965 Act and there is a preserved right under Section 14 to apply to the Court to rectify the registration of the town or village green without limit of time. The application (which can be made by a landowner or third party) could be made up to six years after the decision and potentially enables the Court to hold a re-hearing of the application, consider the facts and the law and depending on the outcome, could potentially lead to the de-registration of the land.

27. Where the Registration Authority decides not to register the land as a town or village green, there is no right of appeal for the applicant, although the decision of the Council may be challenged through judicial review, for which the permission of the Court is required and the application must be made within three months of the date of the decision of the Council. Likewise, a landowner could also use judicial review proceedings to challenge the Council's decision to register their land as a town or village green.

### **Options Considered**

28. Members of the Committee must consider the possible decisions open to them:
- (i) To agree the Inspector's recommendation and register only the copse, other than the north-west corner owned by Wiltshire Council, based on the available evidence.
  - (ii) To reject the Inspector's recommendations/findings (in part) and register all of the land as a town or village green, based on the available evidence.
  - (iii) To reject the Inspector's recommendations/findings (in part) and not register any of the land, based on the available evidence.
  - (iv) To reject the Inspector's recommendations in full and to modify the area or land to be registered (for example only registering the field and/or the land owned by Wiltshire Council), based on the available evidence.
29. Where Members do not resolve to accept the Inspector's findings and recommendation and seek to make an alternative decision, clear, legally valid and good reasons for the decision must be given as the decision of the Registration Authority is potentially open to legal challenge by both the applicant and the landowner.

### **Reason for proposal**

30. Whilst the Committee has reached an in principle decision regarding the registration of the copse, the reasons for this decision must now be formalised and agreed, or amended.
31. The in principle decision in relation to the registration of the copse, does not address the whole of the application land and Members are now required to reach a decision on the whole of the application land, outlining their alternative decision if they resolve not to accept the Inspector's findings and recommendation and giving legally valid reasons for this decision.
32. The resolution of the 30 April 2015 meeting is a full refusal of the Inspector's recommendation; therefore, it could be argued that Members do not agree the Inspector's findings in full. The Inspector found that the field and the area of the copse owned by Wiltshire Council, should not be registered and it is considered that the Committee may agree the Inspector's findings in part (in relation to the field and the land owned by Wiltshire Council), i.e. if the Inspector's recommendation is refused in full Members are in effect refusing the Inspector's

findings that the field and the land owned by Wiltshire Council should not be registered. Members are required to make a decision on the registration of the application land as a whole, giving legally valid reasons for this decision based only on the evidence available to Wiltshire Council as the Registration Authority.

### **Proposals**

33. That:

- (i) The Committee should consider the reasons given for the in principle refusal of the Inspector's recommendation, at its meeting dated 30 April and formalise and agree these reasons, or amend these reasons, in relation to that part of the copse owned by Mr and Mrs Sheppard.
- (ii) The Wiltshire Council Southern Area Planning Committee makes a decision on the application, as a whole.
- (iii) If the decision is to reject the Inspector's recommendation that the application by Winterslow Opposed to Over Development (WOOD) under Section 15(3) of the Commons Act 2006 be approved but only to the extent that Brown's Copse is registered as town or village green in its entirety, other than the north-west corner of the copse that is owned by Wiltshire Council, the Committee must set out what their alternative decision is, i.e. the parts of the land to be registered or not registered giving legally valid reasons which relate to the available evidence.

### **Tracy Carter**

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### **The following unpublished documents have been relied on in the preparation of this Report:**

None

### **Appendices:**

Appendix 1 – Southern Area Planning Committee Report dated 30 April 2015  
(with Appendices A - E)